

16. (Amended.) A combination caller and housing device described in claim 15 [sized for] having a size sufficient to enable ready placement of said caller-housing combination at least near the palate of the user, said crescent flap [adapted] conformed to relatively snugly contact the user's palate and prevent the passage of air between the palate and any reed.

see  
claim  
6

18. (Amended.) A combination caller and housing device described in claim 17, said [contour-mimicking] upper surface conformed to mimic the contour of the user's palate comprises an essentially convex surface.

## II. REMARKS

The Advisory Action mailed 14 November 2002 states that the amendments proffered in the Reconsideration Request and Interview Summary ("Reconsideration Request") have been entered. Attachment 1 hereto is a clean version of the entire set of pending claims, including said amendments and the amendments set forth hereinabove. No new matter is presented by any such amendments.

The Final Action requested clarification of the scope of the claims. In general, claims 1 through 10 are directed primarily to an improvement allowing interchanging of reeds (held partially enclosed within a frame) in a game caller. The improvements of these claims are only to the housing releasably capturing each reed-containing frame; the reed-containing frame is not claimed.

In general, claims 11 through 20 mirror corresponding claims 1 through 10, except that each claim included the combination of both the housing and the reed-containing frame. Similarly, other aspects of the invention such as a convex upper surface, moldability to the contour of the user's palate, and a concave lower surface, appear in both the claim 1-10 grouping and the corresponding member of the claim 11-20 grouping. The human palate is never claimed.

The explanations and contentions contained in the Reconsideration Request provide further explanation to the scope of the claims and their patentability, and the Reconsideration Request is incorporated herein by reference.

Applicant believes that the amendments set forth herein fully satisfy all rejections based upon 35 U.S.C. §112, second paragraph and 35 U.S.C. §102.

**A. Regarding Rejections under 35 U.S.C. §102(b).**

Claims 1 - 20 are rejected under 35 U.S.C. §102(b) as anticipated by U.S. Patent No. 4,960,400 issued to Cooper (the "'400 Patent"), disclosing one or more flexible reed diaphragms secured within a frame, which is sealed within a yoke. Applicant respectfully submits that the present invention, which compares primarily to the '400 Patent's yoke, is distinguishable from the '400 patent in several important respects as set forth in the Reconsideration Request. A partial summary of some of the most salient points follows.

- (a) The '400 Patent's yoke does *not allow any interchanging of reeds/frames*.
- (b) The '400 Patent discloses *no open cavity for insertion or release* of a variety of reeds/frames.
- (c) The '400 Patent's yoke is *not resilient*; the yoke has *no conformational memory* that is one hallmark of resiliency.
- (d) The '400 Patent's yoke does *not have any upper surface that is moldable to the contour of the user's palate*; such moldability better facilitates the blockage of air flow between the caller and the user's palate. Alternatively, nothing in Cooper discloses or envisions an essentially convex portion of the upper surface, as illustrated by Applicant's Figure 3 (item 33) plus Figure 4 (the upper, convex portion of item 41).
- (e) The '400 Patent's yoke does *not disclose or envision an essentially concave portion of the lower surface*, as illustrated by Applicant's Figure 4 (item 41) compared to Figure 5 of the '400 Patent (and Figure 3 of the '220 Patent); such concavity better directs air

over the reeds by forming an air channel between the user's tongue and the lower surface of the housing.

All of the above enumerated points can also be said for the other patent issued to Cooper, U.S. Patent No. 5,061,220. All distinguishing points and contentions made in the Reconsideration Request concerning the '400 Patent are also believed to be valid as to the '220 Patent as well.

Claims 1 and 11 are rejected because, according to the Final Action, the '400 Patent teaches a device for housing comprising planar elastomeric material since Cooper teaches in column 6, paragraph 3, an inherent resilient corrugated material and a planar cavity configured as claimed. The '400 Patent has no paragraph 3 in column 6; column 6 of the '400 Patent includes claims 7 through 9, without any mention of corrugated material or a planar cavity. To the extent that this rejection was intended to cite a different patent issued to Cooper, U.S. Patent No. 5,061,220 (the "'220 Patent"), the corrugated material disclosed in paragraph 4 of column 6 of that patent does not provide any basis for rejecting Applicant's claims 1 and 11. Said isolated paragraph of the '220 Patent discloses an embodiment including a corrugated *reed*, "to give distinctive sound without materially affecting the ability of the diaphragm to vibrate." (Column 6, lines 59 and 60.) Whereas most of the reeds deployed by Cooper are flexible in all directions along its plane, corrugation reduces the flexibility in directions transverse to the corrugation. (In an everyday example, a sheet of corrugated metal or plastic can be rolled with the corrugation "peaks" and "valleys" parallel to the axis of rolling, but not perpendicular to those "peaks" and "valleys") The "inherent resilience" disclosed in said paragraph allowed the normally flexible (i.e., unbiased) reed to exert a "continuous biasing" to oppose the straightening of the corrugations caused by manually exerted (i.e., tongue) tension on the diaphragm. The '220 Patent does *not* disclose endowing its *yoke* with resilience or conformational memory. Just the opposite occurs when corrugating the normally-very-flexible reed; corrugation makes the reed less flexible than it previously was! Neither does the '220 Patent disclose any planar cavity bounded by elastomeric material. The '220 Patent actually teaches away from Applicant's invention using elastomeric material to solve the problem caused by the contours of the user's palate.

Whereas the '220 Patent discloses wedge-shaped or stair-stepped legs on the reed-containing frame as being "particularly helpful to persons the roof of whose mouths slope downwardly forwardly" (Column 5 lines 33 through 35), Applicant goes the other way and solves those and other problems by constructing the entire housing for the reed-containing frame using elastomeric material.

Applicant respectfully submits that his claims 1 and 11 do not recite any elements for a frame to hold reeds together; the preamble to claim 1 distinguishes between the claimed "housing device" and the "frame containing the reed(s)". The Cooper frame functions only to hold the reeds in planar lineal alignment. The plastic frame of Cooper, cited by the Final Action, is not analogous to the elastomeric housing claimed in this Application. The plastic frame in the '400 Patent is intended to *rigidly* support most of the outer margins of the reed; that is why it is made of aluminum or plastic. ('400 Patent, column 2 line 11.) The Cooper frame has *no conformational memory*, nor any of the other distinguishing characteristics explained immediately above. Nor does Cooper disclose any free-standing planar cavity bounded by elastomeric material; the "assembled frame and diaphragms are placed on the adhesive surface 87 of one of the lobes 81 or 82 of the yoke 8, and the other half is folded over as illustrated in FIG. 6, and the margins of the yoke are pressed together to seal the space around the frame". ('400 Patent, column 3 line 67 through column 4 line 3, underlining added.) Cooper's Figure 6 is an exploded view. Cooper's yoke has no cavity; it is essentially a strip of tape having adhesive on one side, which is folded over Cooper's reed-containing frame and sealed tightly.

The amendments made to claims 1 and 11 provide additional limitations that are neither disclosed in either Cooper patent, nor inherent or obvious therein. This is especially true concerning the manner in which the present invention releasably captures the reed-containing frame.

Claims 2 and 12 are rejected because, according to the Final Action, Cooper's upper and lower frame teaches Applicant's ventral aspect and a dorsal aspect. Applicant again contends that these claims do not recite any elements of a reed-containing frame. Cooper's yoke is the portion most arguably related to Applicant's invention; although Cooper's yoke includes an upper lobe and a lower lobe arguably similar to Applicant's dorsal aspect and ventral aspect, Cooper's yoke is not

made of elastomeric material. More importantly, these two aspects are not necessarily the primary distinguishing features of these claims. Anticipation under 35 U.S.C. §102(b) essentially requires a single prior art reference to disclose all elements recited in a claim in a pending application; there is no anticipation if that reference does not disclose all elements claimed by Applicant. Just because Cooper arguably discloses Applicant's dorsal and ventral aspects does not mean Cooper anticipates Applicant's claims 2 and 12. Beside the several distinguishing characteristics of claims 1 and 11 (explained immediately above), from which each of these claims depends, claims 2 and 12 are further distinguished by the buttress (wall) forming the boundary of the cavity. In the '400 Patent, no such boundary exists, and the reed-frame is merely held stationary by being sandwiched between two pieces of tape stuck together. Contrary to the examiner's assertion, Applicant certainly does not admit "that Cooper teaches the limitations of the claimed invention." (Final Action, page 6, second full paragraph.)

The amendments made to claims 2 and 12 provide additional limitations that are neither disclosed in either Cooper patent, nor inherent or obvious therein. This is especially true concerning the manner in which the present invention conforms to the user's palate.

The same can be said for the rejection grounds raised in the Final Action concerning the remaining claims.

**B. Miscellaneous.**

To the extent necessary, Applicant wishes to confirm that Applicant was granted a telephone interview with Primary Examiner Ackun and Examiner Miller on 22 November 2002. At that time, Applicant reiterated his previous arguments (raised in Applicant's Reconsideration Request and request for first telephone interview) that reconsideration should be granted because some of the rejection grounds in the Final Action were based upon language or concepts in one cited patent did not exist in that patent, although such language or concept might arguably be attributable to a different patent issued to the inventor of the mis-cited patent. Despite diligent attempts to discuss the

merits of the rejection grounds in view of the mis-citing, Applicant was not able to obtain the Examiner's confirmation which patent was being relied on (and how Applicant's response affected the Examiner's consideration of said rejection), until after the fee-free response period had expired. Applicant contended that his previous argument, that such mis-citing deprived Applicant to his entitlement to know precisely what prior art was the basis of rejections, was tantamount to a contention that final rejection was improper and should be withdrawn.

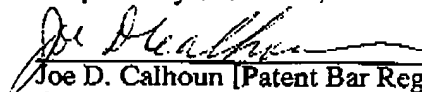
That contention was supported by Applicant's reiteration that additional response should be allowed without any extension fee. Applicant respectfully submits that he has not been allowed to take full advantage of the initial fee-free period, although Applicant has acted diligently to do so.

### III. CONCLUSION

Applicant thanks the Primary Examiner for his assistance in this matter; in the event no claims are found allowable, Applicant requests a telephone interview with the Primary Examiner or Examiner before issuance of any further final action. In any event, the finality of the previous Final Action should be withdrawn, the amendments proffered herein should be entered, and all evidence and contentions set forth herein should be considered by the Patent Office.

Based upon the foregoing, Applicant believes that all objections and rejections raised in the Final Action have been satisfied, putting all pending claims 1 through 20 in condition for allowance.

Respectfully submitted,

  
Joe D. Calhoun [Patent Bar Reg. #40,293]  
CALHOUN LAW FIRM  
319 President Clinton Ave., Suite 205  
Little Rock, AR 72201  
Phone: 501-374-1700  
Telefax: 501-374-4234

cc: John F. Finley